

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2723 of 1997

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA and

Hon'ble MR.JUSTICE R.K.ABICHANDANI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

PATEL BHAKTIBHAI VARVABHAI

Versus

SPECIAL LAND ACQUISITION OFFICER NO.1

Appearance:

MR JV JAPEE for Petitioners

Shri D.N. Patel, Asstt. Govt. Pleader for
respondents nos.1, 2

CORAM : THE ACTING CJ R.A.MEHTA and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/05/97

ORAL JUDGEMENT : (Per R.A. Mehta, Actg CJ)

While issuing notice we had passed the following

order :

"Notice returnable on 28th April 1997.

The attention of the respondents is drawn to the judgment of the Supreme Court in the case of Union of India v. Pradip Kumari, JT 1995 (9) SC 644 wherein the earlier judgment of the Supreme Court in the case of Babua Ram v. State of UP is overruled. Babua Ram's case has been relied by the Land Acquisition Officer for holding that the application under section 28A of the Land Acquisition Act for redetermination of compensation is barred because it is beyond the period prescribed if counted from the date of the first award of the District Court. The Supreme Court has now held that the period of limitation is to be counted from the date of any award on the basis of which redetermination is sought. Direct service."

2. Rule. Shri D.N. Patel, Assistant Government Pleader waives service of rule.

3. The petitioners have made an application for redetermination of the compensation under sec.28A of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act" for brevity) on 7th July 1993, i.e., within three months of the last award being reference LAR No.35/86 passed on 30th April 1993.

4. On 18th January 1997, the Land Acquisition Officer has dismissed the application of the petitioners on the ground that the application was barred by time, relying on earlier order dated 26th February 1993. For this purpose the Land Acquisition Officer had relied upon the case of Babua Ram v. State of U.P.

5. However, the above decision has been overruled by a subsequent judgment of the Supreme Court in the case of Union of India v. Pradip Kumari, JT 1995 (9) SC 644. In view of this judgement of the Supreme Court the above application made under sec.28A of the Act is not barred and within time. Counting from the date of application for redetermination of compensation on the basis of the award dated 30th April 1993, the application is within time. The application is not for redetermination in terms of the award dated 26th February 1993.

6. Against the judgment and award on the basis of

which redetermination is stopped, the Government has preferred First Appeal No.6952 of 1995, which has been admitted and is pending decision. In Civil Application No.5914 of 1995 in the above First Appeal the High Court has passed the following interim order :

"The entire amount has been deposited out of said amount, a portion has been permitted to be withdrawn and the remaining amount is invested by the trial court. This Application is disposed of with a direction that the investment shall continue till the appeal is finally disposed of and the interest earned on the amount invested, if asked by the claimants, shall be paid to them.

Rule is made absolute to the aforesaid extent."

7. The petitioners agree and undertake to this Court that they will abide by the judgment of the High Court in the aforesaid First Appeal No.6952 of 1995 and that the redetermination and payment of compensation shall be governed by decision in the said First Appeal and that the additional compensation payable to them under redetermination award shall also be governed in like manner as per the interim order passed in the First Appeal referred to above. Accordingly it is stated that 50 per cent amount was permitted to be withdrawn subject to whatever be the conditions for that withdrawal; the remaining amount shall be invested in a long term Fixed Deposit by the Land Acquisition Officer and shall abide by the result in the First Appeal.

8. In view of the above the impugned order of the Land Acquisition Officer dismissing the application for redetermination is quashed and set aside and the application is remanded for redetermination in accordance with law. Such decision shall be taken within three months from the date of service of the rule. The award of redetermination and payment on that basis will be on the same terms as per the High Court's order in the above referred First Appeal. The Land Acquisition Officer shall see that the remaining amount is invested in a long term Fixed Deposit so as to abide by the result in the First Appeal. Rule is made absolute accordingly with costs.

-oOo-

karim*